

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 13, 2010, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Walter Schmidt
Tom Day
Nancy Bonniwell
Linda Weber

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Peggy S. Tilley, Senior Land Use Specialist
Amy A. Barrows, Senior Land Use Specialist
Bryan Schmidt, BA10:029, owner
Gene Eggert, BA10:026, owner
Noelle Muceno, BA10:031, owner
Gary O'Brien, BA10:027, neighbor
Cathy McHenry, BA10:027, neighbor
Beth Huizenga, BA10:027, neighbor
Scott Schulenburg, BA10:030, owner
Paul Schultz, BA10:031, agent
Dennis Lutynski, BA08:070, owner
Mike Gatzow, BA10:027, owner
Mary Sellers, BA10:028, agent
Dave Hetherington, BA10:028, agent
Atty. Kathryn Gutenkunst, BA10:027, owner's attorney
Larry Jarnigo, BA10:027, neighbor
Jessica Molar, BA10:029, resident of property

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of September 8, 2010.*

The motion was seconded by Ms. Bonniwell and carried four yes votes. Ms. Weber abstained.

NEW BUSINESS:

BA10:026 GENE EGGERT:

Mr. Day *I make a motion to approve the request, in accordance with the Staff's recommendation, with the conditions recommended and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Ms. Bonniwell noted that the petitioner does have a hardship because his lot is too small to accommodate a residence of a reasonable size under the Code and the proposed use complies within the spirit of the Ordinance and the neighborhood as this was a residence in the past.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variance from the open space and offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the first floor of the structure to be converted to a one-bedroom apartment, subject to the following conditions:

1. A Deed Restriction shall be filed with the Waukesha County Register of Deeds Office which indicates that the first floor of the structure may be converted to a one-bedroom apartment and that the second floor of the structure may not be used for residential purposes without additional approvals from the Waukesha County Board of Adjustment.
2. Prior to the issuance of a Zoning Permit for the interior remodeling to the structure, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction and the proposed use, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the conversion of the first floor of the structure from a commercial use to a one-bedroom apartment. Prior to 2005, the structure was used as a single-family residence. The conversion of the structure from single-family use to two commercial units did not require any variances as there is no minimum open space requirement in the B-2 district for commercial uses. The two adjacent properties, although also zoned B-2, are currently used for residential purposes and the conversion of the first floor of the structure to a one-bedroom use is a less intense use which will be consistent with the surrounding uses in the area. It should be noted that although the use will not comply with the open space requirements of the Ordinance, no expansion of the structure is proposed. In addition, although the structure does not comply with the offset requirement for

the residential use, the structure does comply with the offset requirement for a commercial building. Therefore, the approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

BA10:027 MIKE GATZOW:

Mr. Schmidt

I make a motion to deny the appeal and uphold the Staff decision that the construction activities that have taken place and those activities proposed to take place on the subject residence exceed 50% of the equalized assessed value of the subject residence in accordance with the Staff's recommendation. The reasons for the motion are as follows:

"Given the independent cost estimate and review of project details, the Board does not believe that the subject residential structure can be essentially reconstructed for \$14,299 when considering fair market costs and values. Furthermore, although the scope of the project has exceeded the original permits issued, the cost estimate provided by the petitioner is less than what was previously submitted. It should be noted that the cost estimate provided by Dean London, indicates that the estimated cost of \$37,939 does not include a standard 10% markup and without a standard 2% of total for profit and overhead. Construction that should count toward the 50% Rule includes work that converts an existing structure into a new or substantially different building, work that would affect the structural quality of the building or improvements that contribute to the longevity or permanence of the structure. Since the structure has been essentially gutted with even the exterior walls being reconstructed, the Board feels all of the proposed improvements to the structure will contribute to the longevity or permanence of the structure and because it is essentially a new building.

Additionally, the residence is assessed at \$47,000, which the petitioner did not contest, and for all intents and purposes, the petitioner is proposing to remodel and structurally improve the entire residence. We agree with the logic that the structure, assessed at \$47,000 cannot be practically rebuilt for \$14,000. We have to make a choice between the petitioner's cost estimate and the cost estimate provided by Dean London based on reasonableness and what we believe to be the case. We think that when asked, the petitioner provided unclear answers as to what was being proposed and indicated that his plans were dependent on what direction the Board went. However, we can't do that, if the petitioner wants to he can come back with more definitive plans.

The property currently contains a non-conforming use in that there are three residential structures, whereas Section 3(d)(1) of the Waukesha County Shoreland and Floodland states that there shall be no more than one (1) principal building on a lot and that any building used for the principal use in that district (in this case R-3, Residential) shall be considered the principal building. Furthermore, the structure in question is non-conforming because it does not comply with the road setback requirements of the Ordinance and is within the regulated vision corner. The intent of the 50% Rule is to allow modifications and updates to non-conforming structures that consist of less than 50% of the equalized assessed value of the structure. Where, the cost of improvements exceeds 50% of the equalized assessed value, the request requires the review and approval of a variance from the Board of Adjustment. The Board should then consider whether prolonging the life of the non-conforming structure would comply with the three tests required for the granting of a variance.

The first is the hardship test. This test asks whether or not an unnecessary hardship exists based on whether compliance with the restrictions of the Ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. This test also indicates that hardships should not be financial or economic in nature and that variances should only be granted to provide the minimum amount of relief necessary to allow a reasonable use of the property. In this case, the owner substantially exceeded the scope of the work that was originally presented to the Town and County when permits were applied for. Any cost incurred by the owner for the work or demolition that was started above the scope of the permits issued, is self-created. The petitioner has not demonstrated that denial of the requested after-the-fact variance would result in an unnecessary hardship as the property owner has use of two other principal structures on the site. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The second test is whether the property contains unique physical conditions, which are not self-created, and which prevent compliance with the Ordinance. In this case, the lot itself is conforming relative to lot size and lot width. Although the site is a corner lot, this is not a

unique condition and the site still contains substantial area for residential use. Therefore, there are no physical limitations of the property that prevent compliance with Ordinance requirements. The third test that the Board is asked to consider is whether the granting of the variance will adversely affect the general public interest or welfare or be detrimental to nearby properties, improvements or natural resources. The structure is extremely non-conforming to road setback as it sits 1.16 ft. from the road right-of-way of Oakwood Grove Rd., 14.73 ft. from the road right-of-way of Shady Lane, and within the regulated vision corner. To allow the structure to be essentially rebuilt will prolong the life of an extremely non-conforming structure that has the potential to be a traffic hazard due to its proximity to the road right-of-ways and its location within the vision corner.

Therefore, the petitioner has not demonstrated that any of the three tests have been met to justify the granting of a variance from the 50% Rule. Therefore, the approval of the request for a variance is not within the purpose and intent of the Ordinance.

A quote from the Marris case in the DNR publication says, "We also construe structural repairs in this Ordinance to include proposed improvements that would contribute to the longevity or permanence of the building. This characterization of structural repairs satisfies the public interest in eliminating nonconforming uses. If work indefinitely prolonging the natural life of nonconforming buildings were permitted, the purpose of zoning to achieve uniformity would be defeated." The Staff is correct in using the costs of reconstruction as proposed by Dean London and applying the 50% Rule under the Marris Case. Based on the evidence submitted, the numbers of the report provided by Dean London are more easily sustainable than the numbers presented by the petitioner."

The motion was seconded by Ms. Bonniwell and carried unanimously.

Mr. Schmidt

Based on all of my comments before, the Staff's recommendation and the reasoning I gave that the County's position of value shows that the proposed improvements greatly exceed 50% of the equalized value of the structure, and I move to deny the variance from the 50%.

The motion was seconded by Ms. Weber and carried unanimously.

The Planning and Zoning Division Staff's recommendation was for denial of the proposed requests.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

We recommend that the Board not overturn the Planning and Zoning Division Staff's decision that the project has exceeded the 50% Rule. Given the independent cost estimate and review of project details, Staff does not believe that the subject residential structure can be essentially reconstructed for \$14,299 when considering fair market costs and values. Furthermore, although the scope of the project has exceeded the original permits issued, the cost estimate provided by the petitioner is less than what was previously submitted. It should be noted that the cost estimate provided by Dean London, indicates that the estimated cost of \$37,939 does not include a standard 10% markup and without a standard 2% of total for profit and overhead. Construction that should count toward the 50% Rule includes work that converts an existing structure into a new or substantially different building, work that would affect the structural quality of the building or improvements that contribute to the longevity or permanence of the structure. Since the structure has been essentially gutted with even the exterior walls being reconstructed, the Planning and Zoning Division Staff feels all of the proposed improvements to the structure will contribute to the longevity or permanence of the structure.

The property currently contains a non-conforming use in that there are three residential structures, whereas Section 3(d)(1) of the Waukesha County Shoreland and Floodland states that there shall be no more than one (1) principal building on a lot and that any building used for the principal use in that district (in this case R-3, Residential) shall be considered the principal building. Furthermore, the structure in question is non-conforming because it does not comply with the road setback requirements of the Ordinance and is within the regulated vision corner. The intent of the 50% Rule is to allow modifications and updates to non-conforming structures that consist of less than 50% of the equalized assessed value of the structure. Where, the cost of improvements exceeds 50% of the equalized assessed value, the request requires the review and approval of a variance from the Board of Adjustment. The Board should then consider whether prolonging the life of the non-conforming structure would comply with the three tests required for the granting of a variance.

The first is the hardship test. This test asks whether or not an unnecessary hardship exists based on whether compliance with the restrictions of the Ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. This test also indicates that hardships should not be financial or economic in nature and that variances should only be granted to provide the minimum amount of relief necessary to allow a reasonable use of the property. In this case, the owner substantially exceeded the scope of the work that was originally presented to the Town and County when permits were applied for. Any cost incurred by the owner for the work or demolition that was started above the scope of the permits issued, is self-created. The petitioner has not demonstrated that denial of the requested after-the-fact variance would result in an unnecessary hardship as the property owner has use of two other principal structures on the site and the subject structure could have been remodeled to a lesser extent. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions

governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The second test is whether the property contains unique physical conditions, which are not self-created, and which prevent compliance with the Ordinance. In this case, the lot itself is conforming relative to lot size and lot width. Although the site is a corner lot, this is not a unique condition and the site still contains substantial area for residential use. Therefore, there are no physical limitations of the property that prevent compliance with Ordinance requirements.

The third test that the Board is asked to consider is whether the granting of the variance will adversely affect the general public interest or welfare or be detrimental to nearby properties, improvements or natural resources. The structure is extremely non-conforming to road setback as it sits 1.16 ft. from the road right-of-way of Oakwood Grove Rd., 14.73 ft. from the road right-of-way of Shady Lane, and within the regulated vision corner. To allow the structure to be essentially rebuilt will prolong the life of an extremely non-conforming structure that has the potential to be a traffic hazard due to its proximity to the road right-of-ways and its location within the vision corner.

Therefore, the Staff does not feel that the petitioner has demonstrated that any of the three tests have been met to justify the granting of a variance from the 50% Rule. Therefore, the approval of the request for a variance would not be within the purpose and intent of the Ordinance.

BA10:028 MOLDMAKER'S LEASING & INVESTMENT (OWNER) MARY SELLERS (AGENT):

Mr. Day

I make a motion to deny the request for a variance from the floor area ratio and road setback requirements and approve the request for a variance from the offset requirements as well as approve the request for a special exception from the accessory building floor area ratio requirements of the Ordinance, in accordance with the Staff's recommendation, with the conditions recommended and the reasons stated in the Staff Report. The prevailing factor for the motion is that the applicant was in support of the Staff's recommendation.

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for denial of the request for a variance from the floor area ratio and road setback requirements of the Ordinance but approval of

the request for a variance from the offset requirements as well as **approval** of the request for a special exception from the accessory building floor area ratio requirements of the Ordinance to allow the construction of a new single-family residence with an attached garage and a detached garage on the property, subject to the following conditions:

1. All three parcels in question must be combined by Certified Survey Map prior to the issuance of a Zoning Permit for the proposed structures.
2. The total floor area ratio allowed on the property shall not exceed 15% (2,800.8 sq. ft.). All covered patios, decks, porches, etc. shall be included in the floor area ratio.
3. The residence shall consist of a minimum first floor of 850 sq. ft. and the property must contain a minimum of 400 sq. ft. of garage space.
4. The proposed residence with attached garage and deck, must be located a minimum of 7 ft. from the side lot lines and must comply with the shore and road setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
5. The proposed detached garage must comply with the road setback and offset requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
6. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, and detached garage, and any appurtenances in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Ordinary High Water Mark of Moose Lake as established by the Wisconsin Department of Natural Resources shall be identified on the Plat of Survey and all shore setback measurements shall be measured to the Ordinary High Water Mark.
8. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.

9. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
10. Prior to the issuance of a Zoning Permit, a complete set of building plans for the residence with attached garage and the detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
11. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 7. It should be noted that no retaining walls were proposed as a part of this request, all proposed retaining walls must comply with the setback requirements of the Ordinance unless additional variances are applied for and granted.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a reasonably sized residence with an attached garage and possibly a detached garage on the subject property. Compliance with both the shore and road setback requirements of the Ordinance will result in a building envelope that is approximately 50 ft. deep. A reasonably sized residence with attached garage could be designed to fit within those parameters without the need for a road setback variance. When the lots are combined, the lot size is only slightly less than the required lot size for the district. Without the need for a floor area ratio variance, the total square footage allowed is approximately 2,800 sq. ft. It should be noted that this does not include any living space in the exposed basement. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances from the road setback and floor area ratio requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The lake side parcel is approximately 42 ft. wide. Compliance to the required offset of 10 ft. would allow a building envelope of only 22 ft. wide. In this case, the staff feels that it is reasonable to allow some relief from the offset requirements to allow additional width for the

residence while still complying with the shore and road setback requirements. The requested offset of 7 ft. is consistent with the minimum standard for lots that are served by municipal sewer. Furthermore, the approval of the request for a special exception from the accessory building floor area ratio requirements of the Ordinance will allow the construction of a reasonably sized detached garage. It should be noted that the square footage of the detached garage will be included in the total floor area ratio calculations. Therefore, if approved as conditioned, the petitioners may choose to reduce the size of or eliminate the detached garage to allow additional square footage in the residence and attached garage. The pattern of the development consists of detached garages on the east side of Hasslinger Drive and the approval of the request for a variance from the offset requirement and approval of the request for a special exception from the accessory building floor area ratio requirements of the Ordinance would be within the purpose and intent of the Ordinance.

BA10:029 BRYAN SCHMIDT:

Mr. Schmidt

I make a motion to approve the request for variances from the shoreland and floodplain setback and offset requirements of the Ordinance for the brick paver patio, approval of the request for variances from the road setback, shore and floodplain setback, offset and open space requirements of the Ordinance to allow the petitioner to retain the relocated and enlarged shed, and approval of the request for variances from the shore and floodplain setback requirements to allow the petitioner to retain the new stairs off of the existing upper level deck, with the conditions recommended in the Staff Report and for the reasons stated in the Staff Report with the following modifications:

Condition No. 1 shall be modified to read as follows: "The shed near the lake must be removed and the area properly stabilized with vegetation no later than June 1, 2011."

The reasons for the decision shall be as follows: "The uniqueness of the property is that there is no privacy especially with a commercial building that's nonconforming that's grandfathered on the adjacent property. That intent of the Ordinance is met because the petitioner must have some degree of privacy which is totally lacking given the commercial aspect of the tavern next door. The property is small by nature and the patio provides a reasonable use of the property and is not adverse to the neighborhood or anything else.

As conditioned, the approval of the relocated and enlarged shed will eliminate the existing extremely nonconforming shed from the lakeside of the property. The shed was relocated to a more conforming location relative to shore setback and the property does not contain a garage. Therefore some relief from the Ordinance should be considered to allow some storage space on the property. It should be noted that even with the enlarged shed, the property will still be under the allowable floor area ratio. Furthermore, although the shed does not comply with the road setback requirements of the Ordinance, it is set further back from the road than the structures on the two adjacent properties.

Steps off of the existing upper level deck are a necessary appurtenance to the deck. The new steps as constructed do not encroach any closer into the shore and floodplain setback than the existing deck. Therefore, the approval of the request for variances to allow the petitioner to retain the relocated and enlarged shed, and the steps off of the existing upper level deck, as conditioned, would be within the purpose and intent of the Ordinance."

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the shoreland and floodplain setback and offset requirements of the Ordinance for the brick paver patio, but **approval** of the request for variances from the road setback, shore and floodplain setback, offset and open space requirements of the Ordinance to allow the petitioner to retain the relocated and enlarged shed and **approval** of the request for variances from the shore and floodplain setback requirements to allow the petitioner to retain the new stairs off of the existing upper level deck, subject to the following conditions:

1. The shed near the lake and the newly installed brick paver patio must be removed and the area properly stabilized with vegetation no later than June 1, 2011.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

In addition to the recently constructed brick paver patio, the property contains a concrete patio and an upper level deck on the lakeside of the residence. The brick paver patio, as constructed, is only located approximately 11 ft. from the shore and floodplain of the lake and may or may not encroach slightly onto the adjacent property to the east. The petitioner can certainly use the property for a permitted purpose with the single-family residence, the

concrete patio, and the upper level deck without the additional brick paver patio. Even with the removal of the patio, the area will be relatively flat and will still provide usable area for the owners. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances for the petitioner to retain the brick paver patio would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

As conditioned, the approval of the relocated and enlarged shed will eliminate the existing extremely nonconforming shed from the lakeside of the property. The shed was relocated to a more conforming location relative to shore setback and the property does not contain a garage. Therefore some relief from the Ordinance should be considered to allow some storage space on the property. It should be noted that even with the enlarged shed, the property will still be under the allowable floor area ratio. Furthermore, although the shed does not comply with the road setback requirements of the Ordinance, it is set further back from the road than the structures on the two adjacent properties.

Steps off of the existing upper level deck are a necessary appurtenance to the deck. The new steps as constructed do not encroach any closer into the shore and floodplain setback than the existing deck. Therefore, the approval of the request for variances to allow the petitioner to retain the relocated and enlarged shed, and the steps off of the existing upper level deck, as conditioned, would be within the purpose and intent of the Ordinance.

BA10:030 SCOTT AND XIAN THY SCHULENBURG:

Mr. Schmidt

*I make a motion to **adjourn** the public hearing until the November 10, 2010, Board of Adjustment Meeting to allow the petitioner to bring in more detailed plans for the Board's consideration. The plans should indicate the structural integrity of the existing roof and foundation, whether they can support the project as proposed, and the proposed dimensions.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the offset requirements of the Ordinance as well as **denial** of the request to rescind the Board's previous condition of approval, to allow the existing porch roof on the residence to be enclosed.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing porch roof is only 8.5 ft. from the south lot line and the residence is on the adjacent lot to the south is approximately 1.5 ft. from the lot line. Therefore, if the porch roof were enclosed, it would only be approximately 10 ft. from the residence on the adjacent lot. In their 1979 decision, the Board indicated that the approval of the request, as conditioned, would allow the previous owner to continue to enjoy a reasonable use of the property consistent with the zoning and will suffer no hardship by reason of the action of the Board or the Ordinance. The property has been used for the last 30 years with the porch roof only. The property contains a two-story residence with a fully exposed basement, a detached garage, and a two-story boathouse. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approval of this request would not be within the purpose and intent of the Ordinance.

BA10:031 JAMES NIQUET (OWNER) PAUL SCHULTZ (AGENT):

Mr. Day

I make a motion to approve the request for a variance from the floor area ratio requirements of the Ordinance subject to the following conditions and for the following reasons:

Condition No. 1 shall read as follows: "The floor area ratio on the property shall not exceed 19.5%."

Condition No. 2 shall read as follows: "No increase in the footprint of the structure shall be allowed."

Condition No. 3 shall read as follows: "Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff."

Condition No. 4 shall read as follows: "Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures, the location of the proposed addition, and the lot size, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval."

The reasons for the motion are as follows: "The property is somewhat unique and it would serve to meet the spirit and intent of

the Ordinance especially compared to the adjacent structures and the other structures in the area.”

The motion was seconded by Mr. Schmidt and carried with four yes votes. Ms. Bonniwell voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the floor area ratio requirement of the Ordinance for the proposed construction of a second story addition.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

When the Board granted variances for the construction of the residence on the property in 1998, they indicated that the approval would result in the petitioner making reasonable use of the lake property as a single-family residence with ample garage storage. The structures on the property currently do not comply with the floodplain setback requirement and exceed the allowable floor area ratio although the lot is only slightly nonconforming due to lot size. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approval of this request would not be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA08:070 DENNIS AND REBECCA LUTYNSKI:

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's Memorandum, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a two year extension to the deadline for utilization of the floodplain setback variance granted by the Waukesha County Board of Adjustment on November 14, 2008, subject to the conditions of approval set forth on the Decision Sheet dated November 14, 2010.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Waukesha County Zoning Code has not changed with respect to the floodplain setback requirement since the original decision. Therefore, it is likely that if a new variance request was to be considered, it would be approved, subject to the same conditions.

ADJOURNMENT:

Mr. Day *I make a motion to adjourn this meeting at 10:31 p.m.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy M. Bonniwell".

Nancy M. Bonniwell
Secretary, Board of Adjustment